

Colin R. Kass (*pro hac vice*)  
PROSKAUER ROSE LLP  
1001 Pennsylvania, Ave., N.W.  
Washington, D.C. 20004  
(202) 416-6890  
ckass@proskauer.com

David A. Munkittrick (*pro hac vice*)  
PROSKAUER ROSE LLP  
Eleven Times Square  
New York, New York 10036  
(212) 969-3000  
dmunkittrick@proskauer.com

*Attorneys for Defendant Bright Data Ltd.*  
*Additional counsel listed on signature page*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

X. Corp.,

Plaintiff,

v.

BRIGHT DATA LTD.

Defendant.

Case No. 3:23-CV-03698-WHA

Hon. William H. Alsup  
Courtroom 12 – 19<sup>th</sup> Floor  
April 11, 2024, 1:30 p.m.

**BRIGHT DATA’S SECOND STATEMENT OF RECENT DECISION**

In the two weeks since Bright Data filed its last Statement of Recent Decision (ECF 76), there have been two more diversity cases applying *Shopify* to global or internet service providers. Exs. 1, 2. In its opposition to Bright Data’s Motion for Interlocutory Appeal, X argued district courts have uniformly applied *Shopify* in such cases. But if the Court is keeping score, the tally is now 5 to 1 in favor of no personal jurisdiction over such web-based platforms. This demonstrates, unequivocally, a distinct difference of opinion.

1           A.       ***Zarif v. Hwareh.com, Inc. (“Healthwarehouse.com”), 2024 WL 1268167 (S.D. Cal. Mar. 25, 2024).***

2           In *Healthwarehouse.com*, the defendant allegedly installed a Facebook Pixel into its  
3 website that tracked website visitors’ behavior and collected consumers’ personal medical  
4 information. The defendant was a Delaware corporation based in Missouri, did business  
5 “throughout the United States,” was licensed in California as a non-resident pharmacy, marketed  
6 its products directly to California consumers, shipped goods into California, partnered with a  
7 California medical provider, contracted for the use of California-based servers, and nominated a  
8 California resident to its Board of Directors. 2024 WL 1268167, at \*1. Despite all these contacts,  
9 the court found jurisdiction lacking, following *Briskin v. Shopify*’s two-part framework.

10           The court first “applie[d] *Briskin*” to “narrow[] Defendant’s alleged forum contacts to  
11 those sharing a nexus with [its] website and browser tracking activity.” *Healthwarehouse.com*,  
12 at \*4. In doing so, it excluded from consideration “Defendant’s license as a non-resident  
13 pharmacy, Defendant’s partnership with MedLion to deliver medications, [and] Defendant’s  
14 nomination of Alan Howe to its board of directors” because such acts did not bear a sufficient  
15 “causal relationship” to plaintiffs’ privacy claims. *Id.* The court also excluded from  
16 consideration any shipping of pharmaceuticals to California residents for the same reason.

17           “Having eliminated Defendant’s non-relevant forum contacts,” the court then went on to  
18 analyze whether the remaining forum-contacts exhibit sufficient California prioritization to  
19 satisfy *Shopify*’s second prong. *Id.* The court, however, held that “direct[ing] advertising toward  
20 California residents” does not show that it expressly “aimed its *website activities* at the forum.”  
21 *Id.* As the court explained, there was no evidence that the “Defendant prioritized or treated the  
22 California market differently in the way it structured its business,” and – though it specifically  
23 “registered as an independent pharmacy in California” the plaintiff “fail[ed] to distinguish this  
24 registration from how Defendant operates *in every other state* or identify how Defendant  
25 specifically focused on the California pharmaceutical market.” *Id.* The court similarly rejected  
26 the argument that contracting with server farms in California demonstrated the requisite forum  
27  
28

1 prioritization. As the court explained, the location of servers is “random” or “fortuitous” and  
2 “insufficient to establish specific personal jurisdiction.” *Id.*, at \*5.

3 **B. *Moore v. Carhartt, Inc.*, 2024 WL 1337899 (S.D. Cal. Mar. 28, 2024).**

4 In *Carhartt*, the defendant allegedly incorporated spyware into its website, “tapping and  
5 recording” private information from website visitors. 2024 WL 1337899, at \*1. Applying the  
6 second prong of *Shopify*, the court concluded that personal jurisdiction was lacking because the  
7 website operated the same way everywhere, and was “accessible from anywhere.” *Id.*, at \*3. “It  
8 is not relevant,” the court explained, that the plaintiff “resided in California, accessed Defendant’s  
9 website while in California, and sustained his privacy-based injuries in California” because the  
10 allegations “do not indicate that California was the focal point of the privacy intrusive and data  
11 collection activity.” *Id.*, at \*2. Nor was it relevant that the defendant used “its website to direct  
12 California customers to order products for shipping to California.” *Id.*, at \*3.

1 Dated: April 3, 2024

Respectfully submitted,

2  
3 /s/ Colin R. Kass

4 Colin R. Kass\*  
5 PROSKAUER ROSE LLP  
6 1001 Pennsylvania Ave., N.W.  
7 Washington, D.C. 20004  
8 (202) 416-6890  
9 ckass@proskauer.com

10 David A. Munkittrick\*  
11 PROSKAUER ROSE LLP  
12 Eleven Times Square  
13 New York, New York 10036  
14 (212) 969-3000  
15 dmunkittrick@proskauer.com

16 Robert C. Goodman (Bar No. 111554)  
17 Lauren Kramer Sujeeth (Bar No. 259821)  
18 ROGERS JOSEPH O'DONNELL, PC  
19 311 California Street, 10<sup>th</sup> Floor  
20 San Francisco, CA 94104  
21 (415) 956-2828  
22 rgoodman@rjo.com  
23 lsujeeth@rjo.com

24 Sehreen Ladak (Bar No. 307895)  
25 PROSKAUER ROSE LLP  
26 2029 Century Park East, Suite 2400  
27 Los Angeles, CA 90067-3010  
28 (310) 284-5652  
sladak@proskauer.com

*Attorneys for Defendant Bright Data Ltd.*  
*\*Admitted pro hac vice*